



DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Amendment to the Information Collection Requirements of Prohibited Transaction Exemption 77-4 for Certain Transactions between Investment Companies and Employee Benefit Plans

AGENCY: Employee Benefits Security Administration, Department of Labor

ACTION: Notice

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed amendment to the information collection request (ICR) contained in Prohibited Transaction Exemption 77-4 that is described below. A copy of the ICR may be obtained by contacting the office listed in the ADDRESSES section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov) (<http://www.reginfo.gov/public/do/PRAMain>).

DATES: Written comments must be submitted to the office shown in the Addresses section on or before [INSERT DATE THAT IS 60 DAYS FOLLOWING THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N-5711, Washington, DC 20210, (202) 693-8410, FAX (202) 693-4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Exemption (PTE) 77-4 provides relief from the restrictions of section 406 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986, as amended (the Code), for an employee benefit plan's purchase or sale of shares of an open-end investment company registered under the Investment Company Act of 1940 (mutual fund) when an investment advisor for the mutual fund or its affiliate is: (1) a plan fiduciary; and (2) not an employer of employees covered by the plan.

Section II(d) of PTE 77-4 contains certain conditions for the exemptive relief and provides, in pertinent part, that:

A second fiduciary with respect to the plan, who is independent of and unrelated to the fiduciary/investment adviser or any affiliate thereof, receives a current prospectus issued by the investment company, and full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including the nature and extent of any differential between the rates of such fees, the reasons why the fiduciary/investment adviser may consider such purchases to be appropriate for the plan, and whether there are

any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

The conditions impose ICRs that are subject to the PRA. This notice requests public comment on the Department's proposed revision to the ICRs that would provide that delivery of a “summary prospectus” may be used to satisfy the condition in section II(d) of PTE 77-4 requiring the delivery of a mutual fund’s prospectus to the second fiduciary if the summary prospectus meets the requirements of the Securities and Exchange Commission’s (SEC) revised disclosure provisions for mutual funds including a summary prospectus rule that were published in 2009.¹ Pursuant to the SEC’s revised disclosure provisions, mutual funds also are required to send the full prospectus to the investor upon an investor’s request² and to provide the full prospectus on-line at a specified internet site.³

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the current burden estimates for the revised ICR follows:

Agency: Employee Benefits Security Administration, Department of Labor

Title: Class Exemption 77-4 for Certain Transactions between Investment Companies and Employee Benefit Plans

Type of Review: Amendment to a currently approved collection of information

OMB Number: 1210-0049

¹ See 74 FR 4546 (January 26, 2009). The final rule adopted, among other things, parallel amendments to SEC Form N-1A (the registration form for mutual funds) and to Rule 498 (which includes the content requirements for a summary prospectus).

² 17 CFR § 230.498(f).

³ 17 CFR § 230.498.

Affected Public: Business or other for-profit; Not-for-profit institutions

Respondents: 700

Responses: 363,000

Estimated Total Burden Hours: 33,600

Estimated Total Burden Cost (Operating and Maintenance): \$213,000

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: February 8, 2013

Joseph S. Piacentini
Director, Office of Policy and Research

Employee Benefits Security Administration

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